

Mottram, 1 Str. 167, a *qui tam* action on the Stamp Act, for marrying without license, upon affidavit of the poverty of the defendant who had lain some time in execution, and in Maughan v. Walker, 5 T. R. 98, upon favourable circumstances, after a verdict in usury, which would have justified a motion for a new trial; but it is not a matter of course, and the defendant must show the circumstances entitling him to the indulgence of the Court, for the Court will pay no attention to the consent of the plaintiff after verdict, Crowder v. Wagstaff, 1 B. & P. 18. In Wright v. Stevenson, 5 Taunt. 850, the plaintiff's attorney, in compromising a penal action by consent, in the hurry of business abandoned a good cause of action, but the Court refused to interfere to rescind the order made upon it. Where part of the penalty goes to the King, leave to compound before or after verdict is refused unless the consent of the Crown is previously had, Howard v. Somerby, 1 Taunt. 103, and a King's counsel must be instructed to consent though there be an affidavit that the Crown's moiety has been paid, Sheldon v. Mumford, 5 Taunt. 268. In North v. Smart, 1 B. & P. 51, the composition, including costs paid to the plaintiff, amounted to more than the sum paid to the Crown, and the Court at first inclined against allowing it, but the Statute giving the prosecutor his full costs, and being made for the benefit of the plaintiff it was permitted; but in Lee v. Cass, 2 Taunt. 213, in an action on a statute giving no costs, the plaintiff

411 * having agreed to stay proceedings on payment of a sum in equal moieties to the plaintiff and the Crown and the entire costs to the plaintiff, the Crown, though it was vehemently opposed, obtained a moiety of the costs too. The State's part of the fine with us must be paid to the Sheriff, Code, Art. 88, sec. 58.³ The party paying money to an informer to compound a *qui tam* action may recover it back in an action for money had and received, *i. e.* if not allowed by the Court, Williams v. Hedley, 8 East 378, for the prohibition and penalties of the Statute attach only on the informer and not on the party paying the composition, who therefore is not *particeps criminis* with the compounding informer. It seems from Pie's case, Hutt. 35, that the provision of this section extends to offences committed against subsequent Statutes, see Williams v. Drewe, Willes 392, but it has been held not to apply to offences cognizable only before magistrates, and an indictment for compounding such an offence has been held bad, for the word "composition," used in this section, must mean such composition as might be lawfully made by the consent of the Superior Court, in which process might then be depending, R. v. Crisp, 1 B. & A. 28. It seems that the Statute does extend to suits commenced in Courts which have no jurisdiction as much as if they had jurisdiction, R. v. Tournour, 2 Keb. 106. A plaintiff *qui tam* may be nonsuited, and the defendant, under this section, is entitled to his costs and damages, Wilkinson v. Allot, *supra*, denying Greetham v. Inhab. of Thrale, 3 Burr. 1723,⁴ but the Court will not stay proceedings until the costs of a *non-pros.* at the suit of another plaintiff are paid, English v. Cox, Cowp. 322, and if the plaintiff be out of

³ Code 1911, Art. 87, sec. 42.

⁴ Lowe v. Kansas, 163 U. S. 86.